Supreme Court, U.S.
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No. 91-11

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1991

ALISON KING,
Petitioner
v.
PRUDENTIAL-BACHE SECURITIES, INC., *et al.*,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA AND CALIFORNIA COURT OF APPEAL, FIRST DISTRICT, DIVISION FOUR

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION

RESPONDENTS' FACTUAL AND LEGAL ARGUMENTS WERE DELIBERATELY FALSE AND MISLEADING:
In their Brief in Opposition No. 91-11 (hereinafter "BIO"; BIO page reference corresponds to "fresh" copies that Respondents lately submitted to conform to S.Ct. Rule No.33), none of the arguments by Respondents ("PRUDENTIAL" et al.), upon scrutiny, support their position.

For instance, unlike in *Gilmer v. Interstate/Johnson Lane Corporation*, 500 U.S.___-, 111 L.Ed.2d 26, 111 S.Ct. 1647 (1991), the invalid arbitration clause in the bogus August document that was wrongfully imposed on Petitioner Alison KING ("KING") was the product of coercion and fraud and indeed was never a part of the July contract KING sued on. [Clerk's Transcript on Appeal (hereinafter "C.T.", on file and docketed in the California Court of Appeal, First Appellate District, Division Four) 721-722]. Additionally, unlike Gilmer, KING absolutely did not agree, as proven by her Form U-4 security registration application, to arbitrate her claims. [C.T. 614-618].

In her U-4 Form at page 4 [C.T. 617], the proposed arbitration clause recites: "I agree to arbitrate any dispute... that is required to be arbitrated under the rules, constitutions, and by-laws of the organization with which I register, as indicated in Question 8." Question 8, however, was left blank by both KING and PRUDENTIAL [C.T. 614]. Therefore, on its face the Form U-4, signed by both KING and PRUDENTIAL, clearly did not require KING to arbitrate any of her claims because both she and PRUDENTIAL, by their mutual signatures on said Form U-4, expressly did not agree to do so.

NYSE Rule 347 was also inapplicable because KING had been terminated and de-registered by her former employer Merrill Lynch ("MERRILL") through Form U-5 on August 16, 1984, and by the aforesaid new Form U-4 registration application on August 20, 1984, signed by both herself and PRUDENTIAL, the parties unequivocally and explicitly rejected any arbitration before any of the exchanges by specifically leaving Question 8 blank. [C.T. 614].

Likewise, PRUDENTIAL and counsel's other numerous false, sweeping assertions as well as their other specious arguments are without merit and have already been fully disproved and refuted in KING's Petition.

PRUDENTIAL AND COUNSEL HAVE RESORTED TO GROSS MISREPRESENTATIONS AND OUTRIGHT FABRICATIONS:

In their Brief in Opposition No. 91-11 ("BIO"), PRUDENTIAL and counsel strived to mislead this honorable Court and unfairly prejudice KING by making numerous willful misstatements, misrepresentations, and outright fabrications as will be proven below. As a diversionary "smokescreen", Respondents and counsel further callously turned the situation upside down and maliciously accused the innocent KING of misstatements which only they themselves were freely and knowingly engaged in before this honorable Court [BIO 3, footnote], as will be proven below.

PRUDENTIAL and counsel's audacious reverse accusation is a desperate bid to prevent, by any means and at all costs, the exhumation of a gross miscarriage of justice in this case. It is particularly deplorable that PRUDENTIAL and its counsel have attached no practical significance to the fact that this time their lies and fraud are being perpetrated on none other than the Supreme Court of the United States.

The resulting damage of such unethical and unscrupulous conduct, if condoned or allowed to succeed, can only be enormous and far reaching.

When PRUDENTIAL and its counsel chose to engage in deceptive advocacy before this honorable Court, it is practically impossible for Petitioner KING at this stage to expose more than a tip of the iceberg of their misconduct and deceit. Having fraudulently kept KING from a jury trial and a trial on the important preliminary issue of fraud, PRUDENTIAL and its counsel, gambling on continued impunity, now further endeavor to paint a totally false picture here to mislead this honorable Court, as proven below.

PRUDENTIAL MISREPRESENTATION: EXAMPLE #1:
Although the detailed employment contract between PRUDENTIAL and KING [C.T. 250-251] were memorialized and reduced to writing on July 20, 1984, PRUDENTIAL and counsel now misrepresent to this honorable Court that only "possible employment" [BIO. 3] was being discussed, in July and August 1984.

PRUDENTIAL MISREPRESENTATION: EXAMPLE #2:
PRUDENTIAL and counsel further misrepresent that KING's employment was "provisional" [BIO 3] when in fact such was not the case. Indeed, neither the valid July contract [C.T. 250-251] nor the bogus August document [C.T. 213-219] in any way hinted a "provisional" nature of KING's employment. In fact, if one were to accept counsel and PRUDENTIAL's false representation that in July and August 1984, only "discussions regarding possible employment" [BIO 3] were made then such mere discussions on possibility of employment certainly would not have led to the definitive and detailed July contracts given to both KING and her co-worker Wallace Lin ("LIN") [C.T. 250-253].

Moreover, it is undisputed that PRUDENTIAL never performed any of the terms in the bogus August documents precisely because they were sham and invalid but performed accordingly to the July contract precisely because it was the only valid contract, as proven by conduct in their dealings with LIN. Their deceptive efforts to enlist the Court on their side to justify their fraud against KING and their bad faith breach of KING's valid July contract and to further perpetrate and enlarge an already gross injustice on a powerless minority and female such as KING, who has been gravely injured and aggrieved by their fraudulent conduct since 1984, must not be allowed to succeed if the notion of equal justice under law is to be meaningful in practice.

PRUDENTIAL MISREPRESENTATION: EXAMPLE #3:
The alibi PRUDENTIAL and counsel now present to this honorable Court as to the underlying reasons for PRUDENTIAL's purported actions [BIO 3-7] against KING is the latest of a series of self-contradictory, false and fraudulent "trial alibis" that PRUDENTIAL and its counsel have been fabricating in order to test out a version that better accomplishes the objective of deception and cover-up. For instance, KING has in her possession false, fraudulent and self-contradictory letters from PRUDENTIAL's counsel denying ever hiring KING on the one hand and admitting that KING was hired on the other.

MERRILL LYNCH ORCHESTRATED CUSTOMER COMPLAINTS TO RETALIATE AGAINST KING'S JOB SWITCH TO PRUDENTIAL:
KING was employed as a stock broker at MERRILL prior to recruitment by PRUDENTIAL [C.T. 372]. From 1981 to 1984, in just a short period of three years, her contribution to MERRILL's revenues and profits became so large (about $400,000/year and growing) that a new office in Sunnyvale, California, was specially designed and built in early 1984 by MERRILL, specifically to feature her as the profit center.

Thus when MERRILL discovered that PRUDENTIAL had recruited KING, it was a devastating economic blow to MERRILL's new Sunnyvale office, as KING's departure would result in a sharp drop of revenues in said office as to require it to close, which it soon did. MERRILL therefore decided to punish and retaliate against KING for going to PRUDENTIAL.

KING had every interest to make her job transition from MERRILL to PRUDENTIAL, at the end of her exemplary 3-year employment at MERRILL during which she was rapidly promoted and finally attained the position of Vice President, as smooth and uneventful as possible, having already secured an employment contract with PRUDENTIAL [C.T. 250-251].

MERRILL would not permit this but retaliated instead by instigating a sudden outbreak of customer complaints against KING just before KING's expected uneventful departure to join PRUDENTIAL [C.T. 604-606]. To instigate KING's customers to fraudulently disavow losing trades, MERRILL enticed them with promises of reimbursements which were then unilaterally deducted from KING's commission without her prior knowledge or consent, and at her expense. This fact was deliberately suppressed by MERRILL in Form U-5 [C.T. 604-606].

<u>PRUDENTIAL WAS FULLY AWARE OF MERRILL'S RETALIATION AGAINST KING:</u>

PRUDENTIAL was not only aware of but in fact anticipated such retaliation from MERRILL, when it brought out the issue of probable suit by MERRILL as the reason for the confidentiality clause in KING's July contract [C.T. 251, para.10] and the need for the bogus August document entitled "Employment Agreement" which KING and her co-worker LIN were both hurried into signing on August 20, 1984 [C.T. 254-262].

KING FULLY INFORMED PRUDENTIAL AND FAITHFULLY FOLLOWED ITS INSTRUCTIONS:

PRUDENTIAL was fully informed and aware of MERRILL's tactics against KING and advised KING to vigorously complain to MERRILL's top management which KING did. The Form U-4 [C.T. 614-618] was actually the joint effort of KING and PRUDENTIAL's manager Gene Stansbery ("STANSBERY"), who provided KING guidance, direction and counsel and who advised KING to use "better opportunity" as the answer for joining PRUDENTIAL rather than the fact that KING would not acquiesce to MERRILL's secret and illegal overcharging of margin interest in public customer's accounts and MERRILL's other unlawful corporate practices (which remained uncorrected to this day, to the continued detriment of the public). The entire U-4 Form was then typed up by Stansbery's secretary, Suzie, for KING's signature. It is now clear that even as STANSBERY was counseling KING, PRUDENTIAL was premeditating for an alibi for the subsequent contract breach, mistreatment and defrauding of KING [BIO 6].

PRUDENTIAL MISREPRESENTATION: OTHER EXAMPLES:

Additional evidence that PRUDENTIAL and counsel are presenting misstatements to this honorable Court in bad faith comprise of documents in KING's possession and originating from PRUDENTIAL, proving that KING had fully informed PRUDENTIAL of her termination by MERRILL and that PRUDENTIAL, additionally and independently, knew of KING's release from MERRILL, on and prior to August 20, 1984.

Indeed, one needs look no further than the aforesaid joint-effort U-4 Form, signed by both KING and PRUDENTIAL, which clearly alleged that KING was "discharged, ... for cause" [C.T. 616] Thus, when PRUDENTIAL and counsel falsely accused KING of concealment [BIO 5], they

knowingly did so in order to continue to carry out their callous tactic of selectively presenting to the U.S. Supreme Court diametrically untrue and totally misleading information, hoping thereby to create prejudice against an innocent KING.

PRUDENTIAL MISREPRESENTATION: MORE EXAMPLES:

PRUDENTIAL and its counsel also seized upon the "No" answer to the Form U-4 question which asked whether KING was (on August 20, 1984) "the subject of any investigation or proceeding ... by any securities, commodities or banking agency or jurisdiction, any national securities exchange, registered securities association or clearing agency or by any other agency or jurisdiction?" [C.T. 616] to again create a false picture for this honorable Court that KING had misrepresented [BIO 6-7] and to fabricate yet another false alibi for their egregious conduct against KING. In fact, on August 20, 1984, the date the Form U-4 was signed [C.T. 616], KING was indeed not the subject of any such investigation or proceeding.

PRUDENTIAL MISREPRESENTATION: FURTHER EXAMPLES:

As for the U.S. District Court proceeding [C.T. 620-629], the alleged complaint was dated August 27, 1984 and presumably filed even later. In fact KING did not learn of its existence until months later (she never was personally served) and certainly could not have concealed such a future event on August 20, 1984 before it even came into existence. Thus PRUDENTIAL and counsel's deliberate fabrication and false alibi to this honorable Court that on September 14, 1984, KING was terminated by PRUDENTIAL of her "provisional employment" due to her "blatant misrepresentation" [BIO 7] in executing the U-4 Form made on August 20, 1984 are glaringly bad faith misrepresentations that are directly disproved and refuted by

their own evidence as well as other conclusive evidence on record below [C.T. 616, 620-629].

Regrettably, such blatant falsehood hardly deterred PRUDENTIAL and its counsel from presentment to this honorable Court so as to deliberately mislead and deceive this honorable Court and to further falsely prejudice KING, in a bid to win by any means. It may be mentioned in passing that said District Court complaint was instigated, and the alleged losses and misconduct were in fact attributable solely to misconduct and mismanagement by other MERRILL's brokers in Buffalo, New York, particularly as KING had long since relocated to Sunnyvale, California [C.T. 615].

KING DID NOT RECEIVE A FAIR OPPORTUNITY TO VINDICATE HER RIGHTS AND CLAIMS:

With regards to the New York Stock Exchange ("NYSE") arbitration held in October, 1988, KING's counsel's response to the question from Chairperson as to whether he was satisfied that KING had a fair and full opportunity to present her case was: "Yes. We have, I believe, presented the evidence that we reasonably have available to us." [Arbitration transcript, p.546] His vigorous opposition to arbitration and his demand that the issue of arbitrability be a preliminary special verdict showed by unequivocal conduct that he did not consider the forum fair. It was neither time nor place, of course, for him to antagonize the arbitrators with a blunt answer. Thus his answer was not dispositive as to whether KING had a fair opportunity, as KING was compelled to go to arbitration against her will and Constitutional rights.

Moreover, as proved earlier, KING explicitly never agreed to arbitrate her claims against PRUDENTIAL before any exchange. NYSE was therefore without jurisdiction to arbitrate KING's claims. Such jurisdictional defect is

fundamental, never waived, and may be raised anytime, any place, so long as the defect exists

THERE WAS MISCONDUCT, AND CORRUPTION, BOTH PROCEDURAL AND SUBSTANTIVE, IN THE NYSE ARBITRATION:

Investigation into KING's NYSE arbitration reveals that one of the four arbitrators was a close friend of the First Vice President of MERRILL who was instrumental in and who led MERRILL's retaliatory campaign against KING. All four arbitrators were also closely acquainted with the NYSE Director of Arbitration who empaneled them. One of the four arbitrators was also a Director on the Board of a prominent fellow NYSE member firm friendly to PRUDENTIAL.

Moreover, the deliberation process was abruptly cut short to just three minutes even before it had gotten anywhere because one of the panel members who decided to be conscientious and sought to begin reviewing his extensive notes item by item was immediately overpowered from doing so, particularly by one planted dominant member whose agenda it was to ensure a pre-determined outcome. Instead, said notes and papers were promptly and immediately torn, thereby forcibly and abruptly ending the farcical "deliberation" and relegating the award and decision to the NYSE Director of Arbitration and NYSE Arbitration Department.

PRUDENTIAL AND COUNSEL'S MISCONDUCT IS A GRAVE AFFRONT TO THE HIGH COURT:

The dignity of the United States Supreme Court is simply too supreme and important to be subject to the risk, much less actual repeated conduct as exposed here, of ruthless and unscrupulous misrepresentation from PRUDENTIAL and its counsel. If PRUDENTIAL and its counsel are willing to stoop to such lows even before the United States Supreme

Court in order to win by any means, one needs only imagine what they had done to KING at the lower courts.

PETITIONER SEEKS NOTHING MORE THAN BASIC JUSTICE AND FAIR PLAY:

Petitioner KING, a female and minority, powerless against and impoverished by PRUDENTIAL and its mighty allies since 1984, asks for nothing more than basic justice and fair play that any ordinary American citizen would expect of, and quest for in, our courts. KING has not asked for specific sanctions against the wanton misconduct and deception of PRUDENTIAL and its counsel that have been glaringly and repeatedly perpetrated on and before this highest and most honorable Court of this land because she believes that this honorable Court is wise enough to recognize such persistent wanton misconduct for what it is, and apply all appropriate remedies as the interest of justice and the dignity of this honorable Court would require.

Petition should be granted.

Respectfully submitted,

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